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**Goodbye, European Army – A Comment on the
Consequences of the
German Constitutional Court’s Ruling on the Lisbon Treaty
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The German Constitutional Court has decided! The political tenor of the unanimous ruling will have long-term repercussions. It remains to be seen whether this is really the end of the European integration process so dear to European federalists. It is safe to say though, that its effects on the future development of a common foreign and security policy and its defence related aspects are immense. What does the ruling say? The judgement from Karlsruhe clarifies that, on the one hand, Germany is allowed to abide by the Lisbon Treaty and, on the other hand, Berlin will not, as a result, abdicate Germany’s sovereign right to take political decisions. There is an unalienable core of tasks and duties that constitutes the state’s sovereignty. Among them are questions of religion, budget, law and order, and peace and war.

Does it follow from this that the vision of a European Federation, the United States of Europe, has to be abandoned? The classic question of the final status or political “finalité” of the EU goes this way: Shall the Union develop towards a federal state and hence also in the direction of an integrated European army or shall it remain an entity *sui generis* being de facto what has been called by the Constitutional Court in its Maastricht judgment an “association of states” (“Staatenverbindung”) - something between a confederation and a federation? The answer from Karlsruhe clearly favours the second model. However, the ruling does not entirely block the possibility of a merging of German statehood into a European federation. It does, however, erect such high barriers as to seem insurmountable even in less eurosceptic times, namely a new constitution in which Germany’s renunciation of sovereignty is explicitly enshrined and this is then approved by the German people, the real sovereign.

What are the consequences for the build-up of a European Army? Recently there has been much talk in German political parties about the necessity of a European Army. Chancellor Angela Merkel, for instance, commented in an interview given to the German tabloid Bild in March 2007: “We have to come closer to a common European Army.” The Social Democrats (SPD) and the Liberals (FDP) also argued in favour of this goal in their respective manifestos for the election to the European Parliament in June 2009. The ideas linked to this approach are quite plausible. War within the Union would definitely become impossible. European integration was already a question of war and peace for former chancellors from Konrad Adenauer to Helmut Kohl. Preserving peace was, and still is, one of the main rationales for the “process of creating an ever closer Union among the peoples of Europe”, as the preamble to the Treaty of the European Union puts it. Today, as the thought of war between EU member states has become totally absurd, another rationale has come to the fore. Europe is to become more influential and engaged in world affairs. In the new global age, it should become capable of acting on the same footing as the old and new great powers. This goal is out of reach for any single member state. Hence, they have to pool their capabilities and pursue a common political approach, especially when facing a global financial and economic crisis.

If European politicians really want to stay the course towards these two goals of peace and enhanced effectiveness in world affairs, they have to do it within the framework of a

confederation of states. There are enough construction sites still lying idle: the civilian and military capability gaps, the absent common armament market, the still-rudimentary export control regime, the deficient comprehensive approach or the lack of coordination of national defence planning, to mention only a few. Petty jealousies prevail. In case of doubt, states decide in favour of their all-too-often parochially defined national interests.

The Lisbon Treaty offers new opportunities, especially in the areas of foreign, security and defence policy. If it comes into force, there will be the new position of the High Representative for Foreign Affairs and Security Policy, who will be, at the same time, Vice President of the European Commission and Commissioner for External Affairs. In addition, there will be a European External Action Service consisting of foreign and security experts from the Commission, the Council and seconded personnel from the national capitals. Finally the EU Member States will pursue the forging of a common defence policy, involving, to mention just a few areas, the assistance clause in case of aggression against a member state on its territory, the obligation to improve military capabilities, and the possibility of entering into a so-called “permanent structured cooperation, i.e., that some member states will be allowed to go further in their defence cooperation than other ones.

All this, by the way, will be possible without direct control of the European Parliament whose role is limited to asking questions and making recommendations. It is the Council – that is, the sovereign nation states - which decides unanimously. With respect to so called out-of-area missions of the Bundeswehr, the German Constitutional Court already ruled in 1994 that the German Bundestag first has to give a mandate. Since then the Bundeswehr has been called the “Army of the Parliament”. And so it will be in future. The EU has indeed created a set of planning and conduct capabilities for civilian and military crisis management. In addition, since 2003, it has launched two dozen crisis management operations, six of them of a military nature. But Brussels does not dispose over its own forces. It is the member states which offer the civilian and military assets on a case-by-case basis.

In future as well, Brussels will not be able to decide on whether or not to send German soldiers to a military mission, because the EU will never become a full-fledged federation. The Bundestag will never relinquish its core competence in questions of war and peace. What remains possible and desirable, given the challenges of a globalised world, is increasing cooperation in the area of security and defence. However, the vision of an integrated European army of the United States of Europe has faded away as a result of the judgment of the German Constitutional Court.